IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3118 of 2006
With
CIVIL APPLICATION No. 10022 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA INSURANCE CO. LTD - Appellant(s)
Versus
VAGHJIBHAI HIRABHAI PANDYA & 1 - Defendant(s)

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Appearance :

MS HINA DESAI for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the learned Commissioner for Workmen's Compensation, Gandhidham-Kutch (for short 'the Authority') passed in W.C.(N.F.)No.207 of 1996 dated 16.12.2005 whereby the Authority partly allowed the said application.

2.0 The brief facts of the case are that the present opponent No.1 was working as driver on a tanker owned by present opponent No.2 and insured

by the present appellant. It was the case of the opponent No.1 before the Tribunal that on 08.06.1990, while he was on his duty in the employment of opponent No.2, he met with an accident. On account of the said accident he received serious bodily injuries, and hence, he send a notice to opponent No.2 claiming compensation. Since, opponent No.2 failed to take any action, opponent No.1 filed an application before the Authority claiming an amount Rs.98,530/- at the rate of 18 per cent interest by way of compensation and 50 per cent of the aforesaid amount towards penalty.

2.1 In the said application, after hearing the parties, the Authority passed the judgment and award which is under challenge in this appeal.

3.0 Heard learned Advocate for the appellant. It was the case of the opponent No.1 before the Authority that on the day of incident on account

of rain he was sitting in the tanker on a 'Kuchha' road and at that time he was dashed by a truck, on account of which he has sustained serious bodily injuries. He has stated that he was earning Rs.1,950/- per month. On perusal of documents produced on record it appears that the case put forward by the opponent No.1 was neither challenged by the appellant as well as opponent No.2 nor they led any evidence to controvert the story put forward by the opponent No.1. Therefore, the Authority awarded an amount of Rs.1,02,425/- by way of compensation with interest at the rate of 12 per cent. Here, it may be noted that the opponent No.1 had originally claimed Rs.98,530/- only by way of compensation. In the case on hand, the original claimant- opponent No.1 is not served. Hence, in view of the settled legal position that in the absence of original creditor of the judgment no decree can be modified, I am of the opinion that the ends of justice would met by deducting the excess amount awarded by the Authority i.e. Rs.

(1,02,425 – 98, 530)= Rs.98,530/-.

4.0 In the result, the appeal is partly allowed. The opponent No.1-original claimant shall be entitled for Rs.98,530/- by way of compensation with interest at the rate of 12 per cent from the date of application before the Authority. The judgment and award of the learned Commissioner for Workmen's Compensation, Gandhidham-Kutch (for short 'the Authority') passed in W.C.(N.F.)No.207 of 1996 dated 16.12.2005 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. It shall be open to the appellant to recover the amount in question from the employer-Opponent No.2, after giving notice. No order as to costs.

4.1 Since the main matter has been disposed of civil application shall not survive and it also stands disposed of accordingly.

(K.S. Jhaveri,J.)

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